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Statement submitted by the UNCAC Coalition, a non-governmental organization not in consultative status with the Economic and Social Council**

The following document is being circulated in accordance with paragraph 1 (i) of resolution 4/6 of the Conference of the States Parties to the United Nations Convention against Corruption and rule 17, paragraph 3 (b), of the rules of procedure for the Conference.

* CAC/COSP/IRG/2015/1.
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MAKING UNCAC WORK: COALITION STATEMENT AHEAD OF THE 6th CONFERENCE OF STATES PARTIES IN ST. PETERSBURG

Recalling that corruption weakens public institutions and the rule of law, damages the competitive and investment climate, jeopardizes sustainable development and fosters instability; furthermore, that it damages people's sense of shared obligations and rights and creates an environment of hopelessness and anger;

Reminding States Parties of their commitments under the UN Convention against Corruption (UNCAC) to promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

Welcoming the recently adopted Doha Declaration promoting, *inter alia*, the rule of law and public participation at national and international levels;

Concerned that over ten years after the entry into force of the Convention there is still extensive impunity for corruption crimes;

The UNCAC Coalition calls on UNCAC States Parties to adopt resolutions at the 6th session of the UNCAC Conference of States Parties on the following:

On civil society participation

1. Reaffirm the importance of civil society participation in anti-corruption efforts, call on States Parties to ensure such participation by creating and maintaining a safe and enabling environment in which civil society can operate free from hindrance and insecurity; and note regrettable instances where such participation is constrained in a way contrary to the letter and spirit of the Convention and inconsistent with international human rights standards. Also, mandate UNODC to develop, in consultation with civil society organizations, indicators to measure involvement of civil society in the implementation of UNCAC. (UNCAC Articles 5 and 13)

2. Following discussion of a CoSP agenda item on civil society participation, confirm that in line with CoSP rules of procedure 2 and 17, civil society organizations are entitled to participate as observers in all CoSP subsidiary bodies, including the Implementation Review Group and any UNCAC Working Groups. (UNCAC CoSP Rules of procedure 2 and 17)

On the UNCAC review process

3. Add to UNCAC reviews an agreed process to follow up on country review recommendations, including recommendations for technical assistance, and ensure civil society participation in that process. (UNCAC Article 63(4)(5)(6) and (7))

4. Establish a transparent and inclusive 2nd cycle of the UNCAC review process covering both chapters II and V and, taking account of the importance of reviewing both, ensure adequate resources for this cycle. Request States Parties and UNODC to publish updated individual country review timetables, information about focal points and announcements of completion of country reviews. Also require country visits, civil society participation and publication of

key review documents, including self-assessments and full country reports. (UNCAC Article 63)

On prevention

5. Remind States Parties that, as recognized in CoSP Resolution 5/4, effective public access to information is essential for corruption prevention and calling on them to adopt and implement comprehensive access to information legislation. (UNCAC Chapter II, especially Articles 5(1), 9, 10 and 13))

6. Building on CoSP Resolution 4/4, call for the collection of beneficial ownership information through national-level public registers of companies and trusts maintained with updated current information. Also calling for governments to collect and publish beneficial ownership information of all bidders for public procurement contracts. Further call for customer due diligence obligations, including in relation to beneficial ownership, to be required or strengthened with respect to banks and other service providers, including lawyers and trust and company formation providers, and actively enforced. (UNCAC Article 12(c))

7. Call on States Parties to publish information on people with prominent public functions (Politically Exposed Persons) through national-level public registers as well as requiring them and others to file comprehensive asset declarations and make them publicly available. (UNCAC Articles 8, 14 and 52)

8. Request UNODC to convene an expert meeting to develop guidelines for the prevention, detection and sanctioning of corruption in the award of loans, subsidies and commercial licences. (UNCAC Article 12(d))

On criminalization and enforcement

9. Call on States Parties to recognize and take effective action against the serious crime of grand corruption and to encourage the exercise of extraterritorial jurisdiction for the prosecution of the same. (UNCAC Article 16(2))

10. Recognize the importance of whistleblower protection in the public and private sectors and welcome UNODC's draft Resource Guide on Good Practices in the Protection of Reporting Persons. (UNCAC Article 33)

11. Mandate UNODC to work with States Parties to develop common guidelines for settlements in corruption cases. Settlements should at a minimum:

    (i) be used only with companies that genuinely self-report, cooperate fully and have properly addressed the wrongdoing internally, including with a credible compliance programme;

    (ii) provide for admission of wrongdoing and full and specific details of the wrongdoing;

    (iii) provide for effective, proportionate and dissuasive sanctions including the full benefit received from the wrongdoing;

(iv) provide for compensation to those harmed by the offence, including foreign victims;

(v) require that any agreement, both its terms and justification, be subject to a public judicial hearing and to final court approval;

(vi) include the publication of the agreement and the related court decisions as well as, upon completion of the terms of the agreement, publication of the details on the actual performance of the agreement;

(vii) provide that, if reached with companies, the settlement does not exclude the prosecution of individuals, with no employer contribution to their fines.

(UNCAC Articles 26(4) and 30(1))

12. Call for States Parties to ensure that domestic immunities for public officials are strictly limited and that there are transparent and effective procedures for suspending them. (UNCAC Article 30(2)) Also call for States Parties to ensure that immunities and other privileges enjoyed by public officials - domestic, foreign and international - are not abused and, in particular, are not used to shield individuals from accountability for corruption offences. Further call for the CoSP to promote these standards to the International Law Commission which is in the process of drafting articles on "Immunity of State officials from foreign criminal jurisdiction".

13. Call for States Parties to have the necessary safeguards to ensure that there is no undue influence, including political influence, on enforcement decisions. Also call on States Parties to ensure the operational independence and resourcing of both specialised law enforcement bodies and the judiciary. (UNCAC Articles 11, 30(3) and 36)

On remedies for corruption

14. Remind States Parties that they must take effective measures to address the consequences of corruption and to ensure compensation for victims; welcome the legal concept of social damage presented by the Government of Costa Rica during the 4th CoSP (Corrupción y daño social, CAC/COSP/2011/CRP.6) and encourage States Parties to adopt similar approaches. Further mandate StAR/UNODC to develop a set of guiding principles based on best practice examples with respect to the identification, quantification and reparation of the damage caused by corruption. (UNCAC Articles 34 and 35)

On asset recovery

15. Call for States Parties to ensure that any corruption-related court or out of court proceedings involving corruption proceeds be conducted in line with chapter V which provides for the repatriation of said property to the country from which it was taken or that suffered damage as a result of the commission of the underlying corruption offence/s. (UNCAC Article 3 and Chapter V)

16. Call on States Parties to enact and implement comprehensive laws providing for the confiscation of any asset obtained through or derived from the commission of an offence established by the convention – including the proceeds of active bribery. (UNCAC Article 3)

17. Urge States Parties to enhance the direct recovery of property through proactive and timely information sharing and adequate laws on standing. (UNCAC Articles 53 and 56)

18. Call for States Parties to ensure that assets returned pursuant to the Convention are used and managed in a transparent and accountable manner conducive to their contributing to sustainable development. (UNCAC Article 9)

19. Call on States Parties to promote transparency and accountability by providing StAR with up-to-date information about any court or out of court proceedings involving cross-border proceeds of corruption as well as actual data on the volume of assets seized, confiscated and returned in or by their jurisdiction each year. (UNCAC Article 9)

On supplementary procedures and measures

20. Request the IRG to prepare for the 7th COSP (1) terms of reference for a communication and reporting procedure for serious non-compliance and lack of effective enforcement of UNCAC obligations; (2) a report on the advisability and feasibility of establishing a single international mechanism for resolving transnational and grand-corruption offences, prepared in consultation with relevant intergovernmental organizations; and (3) a report on options for improving coordination with the review processes of other anti-corruption conventions. (UNCAC Article 63(7))

States Parties should demonstrate their commitment in practice. As recognized by delegates at the 13th UN Congress on Crime Prevention and Criminal Justice in Doha in April 2015 paper promises are not enough to successfully combat corruption.

21 May 2015